

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

June 1, 2007

The Honorable Brad Johnson
Secretary of State
State Capitol, Rm. 260
Helena, MT 59620

RE: House Bill 2 - Item Veto

Dear Secretary Johnson:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby transmit to you, with items vetoed, House Bill (HB) 2, **"AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2009; AND PROVIDING AN EFFECTIVE DATE."** The vetoed items are indicated by the "strike outs" on the bill.

The general appropriations act for the operation of government is different than all other bills considered and passed by the Legislature. The Montana Constitution recognizes that difference in that the general appropriations act, unlike most other bills, may contain more than one subject. Mont. Constit. Article V, section 11(3). The Montana Constitution also expressly limits the contents of the general appropriations bill to "only appropriations." Mont. Constit. Article V, section 11(4). Thus, the constitution prohibits the legislature from including what are commonly known as "riders" in the general appropriations bill. A recent Montana district court decision analyzing the governor's item veto power defined a "rider" as "'an unrelated substantive piece of legislation in the appropriation bill.'" *Cobb v. Schweitzer*, 2006 Mont. Dist. LEXIS 892, ¶ 1, quoting *Rants v. Vilsak*, 684 N.W.2d 193, 206-07 (Iowa 2004). "Riders" must be enacted as separate pieces of legislation.

My vetoes all concern provisions I consider to be "riders" to HB 2. They are reporting requirements, which should be matters of substantive law, not matters for inclusion in the general appropriations bill. When the 2005 Legislature included such "riders" in HB 2 - the general appropriations bill passed by that Legislature - I vetoed those reporting requirements. My item vetoes were challenged in district court. In *Cobb v. Schweitzer*, the court upheld my veto of 32 reporting requirements, concluding that the governor's constitutional item veto authority, found in Article VI, section 10(5) of the Montana Constitution, extended to these improper "riders."

As in 2005, sprinkled throughout the general appropriations act passed by the 2007 Legislature are numerous reporting requirements - 35 in total. These "riders" to the

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general appropriations act are directed primarily, but not exclusively, to the executive branch of government. HB 2 also attaches these "riders," or reporting requirements, to the budget for the judiciary.

As a general and fundamental principle, reporting requirements are matters of substantive law. This principle is recognized in our constitutional and statutory framework. Even the Montana Constitution contains a reporting requirement directing that reports of annual audits of Montana's unified investment program be made to both the legislature and the governor. Mont. Const. Article VIII, section 13. Likewise, Montana statutes provide for literally dozens of reporting requirements applicable to all agencies and all branches of government. To name just a few, § 5-11-210, MCA, is devoted to the method by which reports required by law must be given to or filed with the legislature. Notably, the reporting requirements contained in HB 2 do not conform to the requirements of 5-11-210. Another statute, § 17-1-103, MCA, directs the Department of Administration to make all reports and submit all information and data requested by the legislature. Perhaps most dramatically, despite the inclusion of *eighteen* separate reporting requirements in the HB 2 narrative to the budget for the Department of Public Health and Human Services, § 2-15-2225, MCA, already requires DPHHS to report performance data to the appropriate interim legislative committee and to the office of budget and program planning.

Clearly, the Legislature may require agencies to provide it with reports. I do not contest that power. Indeed, I am aware of no instance in which an executive branch agency declined to provide the Legislature with information legitimately requested. My concern, however, is that except in limited instances, reporting requirements do not belong in the general appropriations bill, which, pursuant to the constitutional mandate, may contain "only appropriations."

As stated, I first addressed the issue of "riders" contained in a general appropriations bill when I vetoed the reporting requirements of HB 2 in 2005. My level of concern is even greater now, because notwithstanding my 2005 item vetoes and the court decision upholding them, the number of these substantive law requirements and the method by which the requirements are injected into this budget bill have expanded.

These reporting requirements, or "riders," typically instruct that an appropriation includes funding for, or is contingent upon, the provision of a report by an executive or judicial branch agency to various legislative committees at times during the biennium. They differ, however, in that some are specifically funded by a line item of appropriation, some are not specifically funded, some indicate that the funding for an entire program (which may be in the millions of dollars) includes funding for, or is contingent upon, the production of a specific report, some provide that if the agency fails to report to the legislature, the appropriation shall be reduced or is voided, and some contain no reference whatsoever to money appropriated.


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Pursuant to Montana's Constitution, the general appropriations bill should delineate the boundaries for spending. It should not contain substantive requirements on the executive and judicial branches of government in an attempt to micro-manage their work or in an attempt to avoid the process by which general legislation is proposed and independently scrutinized. The increasing inclusion of these reporting requirements is a "slippery slope" that runs counter to the constitutional principles I have discussed.

To illustrate my point, one need only look to the vast majority of the specific reporting requirements I have vetoed in HB 2. The vast majority of those reporting requirements pertain to the agencies' articulated goals and objectives. Significantly, the requirements for agencies to identify their goals and objectives are contained in permanent statutes in the Montana code related to the budget process. See, e.g., §§ 17-7-111 and 17-7-123, MCA. It seems axiomatic that if the Legislature wants periodic reports from agencies on their successes in meeting the goals and objectives the agencies have articulated in conformity with the requirements of Title 17, the Legislature should consider separate legislation amending Title 17 to include such substantive law requirements.

In conclusion, I sincerely hope that my item vetoes of these reporting requirements in HB 2 do not detract from the Legislature's accomplishment in passing a balanced, sustainable budget, which provides tax relief to Montanans and invests in Montana's priorities. Except for the objectionable items, I have approved HB 2 in its entirety. Also, the fact that I have issued the item vetoes of the reporting requirements should not be mistaken for an unwillingness on the part of my Administration to provide legislators, legislative committees, or the public with information legitimately sought. Rather, my veto of these reporting requirements, which I consider to be "riders," underscores my commitment to respecting the constitutional separation of powers between the three branches of government and the constitutional and statutory framework for the enactment of laws.

Sincerely,



BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division